

AMENDED IN ASSEMBLY JUNE 30, 2016

AMENDED IN SENATE MARCH 28, 2016

SENATE BILL

No. 1088

Introduced by Senators Nguyen and Bates
(Coauthors: Senators Fuller, Galgiani, and Nielsen)
(Coauthors: Assembly Members Brough and Wagner)

February 17, 2016

An act to amend Section ~~152~~ 803 of the Penal Code, relating to wrongful concealment.

LEGISLATIVE COUNSEL'S DIGEST

SB 1088, as amended, Nguyen. ~~Wrongful concealment: accidental death.~~ *Wrongful concealment: statute of limitations.*

Existing law makes it a misdemeanor for a person who has knowledge of an accidental death to actively conceal or attempt to conceal that death. Existing law provides that the punishment for that offense is imprisonment in a county jail for not more than one year, or by a fine of not less than \$1,000 nor more than \$10,000, or by both that fine and imprisonment.

~~This bill would make that offense a misdemeanor or a felony, and if a felony, punishable by imprisonment in a county jail, as specified, or the fine described above, or by both that fine and imprisonment.~~

~~By creating a new felony, this bill would impose a state-mandated local program.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Existing law also sets forth various time limits to prosecute crimes. Except as otherwise specified, prosecution for an offense that is not punishable by death or imprisonment in the state prison is required to be commenced within one year after commission of the offense. Existing law provides that for certain offenses, the prescribed limitation of time does not commence to run until the discovery of the offense. Existing law also provides that for other offenses, the criminal complaint may be filed within one year after the person is initially identified by law enforcement as a suspect in the commission of the crime, as specified.

This bill would provide that for the offense of actively concealing or attempting to conceal an accidental death, as described above, a criminal complaint may be filed within one year after the person is initially identified by law enforcement as a suspect in the commission of the offense.

Vote: majority. Appropriation: no. Fiscal committee: ~~yes~~-no.
State-mandated local program: ~~yes~~-no.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 803 of the Penal Code is amended to*
2 *read:*
3 803. (a) Except as provided in this section, a limitation of time
4 prescribed in this chapter is not tolled or extended for any reason.
5 (b) No time during which prosecution of the same person for
6 the same conduct is pending in a court of this state is a part of a
7 limitation of time prescribed in this chapter.
8 (c) A limitation of time prescribed in this chapter does not
9 commence to run until the discovery of an offense described in
10 this subdivision. This subdivision applies to an offense punishable
11 by imprisonment in the state prison or imprisonment pursuant to
12 subdivision (h) of Section 1170, a material element of which is
13 fraud or breach of a fiduciary obligation, the commission of the
14 crimes of theft or embezzlement upon an elder or dependent adult,
15 or the basis of which is misconduct in office by a public officer,
16 employee, or appointee, including, but not limited to, the following
17 offenses:
18 (1) Grand theft of any type, forgery, falsification of public
19 records, or acceptance of, or asking, receiving, or agreeing to
20 receive, a bribe, by a public official or a public employee,
21 including, but not limited to, a violation of Section 68, 86, or 93.

1 (2) A violation of Section 72, 118, 118a, 132, 134, or 186.10.

2 (3) A violation of Section 25540, of any type, or Section 25541
3 of the Corporations Code.

4 (4) A violation of Section 1090 or 27443 of the Government
5 Code.

6 (5) Felony welfare fraud or Medi-Cal fraud in violation of
7 Section 11483 or 14107 of the Welfare and Institutions Code.

8 (6) Felony insurance fraud in violation of Section 548 or 550
9 of this code or former Section 1871.1, or Section 1871.4, of the
10 Insurance Code.

11 (7) A violation of Section 580, 581, 582, 583, or 584 of the
12 Business and Professions Code.

13 (8) A violation of Section 22430 of the Business and Professions
14 Code.

15 (9) A violation of Section 103800 of the Health and Safety
16 Code.

17 (10) A violation of Section 529a.

18 (11) A violation of subdivision (d) or (e) of Section 368.

19 (d) If the defendant is out of the state when or after the offense
20 is committed, the prosecution may be commenced as provided in
21 Section 804 within the limitations of time prescribed by this
22 chapter, and no time up to a maximum of three years during which
23 the defendant is not within the state shall be a part of those
24 limitations.

25 (e) A limitation of time prescribed in this chapter does not
26 commence to run until the offense has been discovered, or could
27 have reasonably been discovered, with regard to offenses under
28 Division 7 (commencing with Section 13000) of the Water Code,
29 under Chapter 6.5 (commencing with Section 25100) of, Chapter
30 6.7 (commencing with Section 25280) of, or Chapter 6.8
31 (commencing with Section 25300) of, Division 20 of, or Part 4
32 (commencing with Section 41500) of Division 26 of, the Health
33 and Safety Code, or under Section 386, or offenses under Chapter
34 5 (commencing with Section 2000) of Division 2 of, Chapter 9
35 (commencing with Section 4000) of Division 2 of, Section 6126
36 of, Chapter 10 (commencing with Section 7301) of Division 3 of,
37 or Chapter 19.5 (commencing with Section 22440) of Division 8
38 of, the Business and Professions Code.

39 (f) (1) Notwithstanding any other limitation of time described
40 in this chapter, a criminal complaint may be filed within one year

1 of the date of a report to a California law enforcement agency by
2 a person of any age alleging that he or she, while under 18 years
3 of age, was the victim of a crime described in Section 261, 286,
4 288, 288a, 288.5, or 289, or Section 289.5, as enacted by Chapter
5 293 of the Statutes of 1991 relating to penetration by an unknown
6 object.

7 (2) This subdivision applies only if all of the following occur:

8 (A) The limitation period specified in Section 800, 801, or 801.1,
9 whichever is later, has expired.

10 (B) The crime involved substantial sexual conduct, as described
11 in subdivision (b) of Section 1203.066, excluding masturbation
12 that is not mutual.

13 (C) There is independent evidence that corroborates the victim's
14 allegation. If the victim was 21 years of age or older at the time
15 of the report, the independent evidence shall clearly and
16 convincingly corroborate the victim's allegation.

17 (3) No evidence may be used to corroborate the victim's
18 allegation that otherwise would be inadmissible during trial.
19 Independent evidence does not include the opinions of mental
20 health professionals.

21 (4) (A) In a criminal investigation involving any of the crimes
22 listed in paragraph (1) committed against a child, when the
23 applicable limitations period has not expired, that period shall be
24 tolled from the time a party initiates litigation challenging a grand
25 jury subpoena until the end of the litigation, including any
26 associated writ or appellate proceeding, or until the final disclosure
27 of evidence to the investigating or prosecuting agency, if that
28 disclosure is ordered pursuant to the subpoena after the litigation.

29 (B) Nothing in this subdivision affects the definition or
30 applicability of any evidentiary privilege.

31 (C) This subdivision shall not apply if a court finds that the
32 grand jury subpoena was issued or caused to be issued in bad faith.

33 (g) (1) Notwithstanding any other limitation of time described
34 in this chapter, a criminal complaint may be filed within one year
35 of the date on which the identity of the suspect is conclusively
36 established by DNA testing, if both of the following conditions
37 are met:

38 (A) The crime is one that is described in subdivision (c) of
39 Section 290.

1 (B) The offense was committed prior to January 1, 2001, and
2 biological evidence collected in connection with the offense is
3 analyzed for DNA type no later than January 1, 2004, or the offense
4 was committed on or after January 1, 2001, and biological evidence
5 collected in connection with the offense is analyzed for DNA type
6 no later than two years from the date of the offense.

7 (2) For purposes of this section, “DNA” means deoxyribonucleic
8 acid.

9 (h) For any crime, the proof of which depends substantially
10 upon evidence that was seized under a warrant, but which is
11 unavailable to the prosecuting authority under the procedures
12 described in *People v. Superior Court (Laff)* (2001) 25 Cal.4th
13 703, *People v. Superior Court (Bauman & Rose)* (1995) 37
14 Cal.App.4th 1757, or subdivision (c) of Section 1524, relating to
15 claims of evidentiary privilege or attorney work product, the
16 limitation of time prescribed in this chapter shall be tolled from
17 the time of the seizure until final disclosure of the evidence to the
18 prosecuting authority. Nothing in this section otherwise affects
19 the definition or applicability of any evidentiary privilege or
20 attorney work product.

21 (i) Notwithstanding any other limitation of time described in
22 this chapter, a criminal complaint may be filed within one year of
23 the date on which a hidden recording is discovered related to a
24 violation of paragraph (2) or (3) of subdivision (j) of Section 647.

25 (j) Notwithstanding any other limitation of time described in
26 this chapter, if a person flees the scene of an accident that caused
27 death or permanent, serious injury, as defined in subdivision (d)
28 of Section 20001 of the Vehicle Code, a criminal complaint brought
29 pursuant to paragraph (2) of subdivision (b) of Section 20001 of
30 the Vehicle Code may be filed within the applicable time period
31 described in Section 801 or 802 or one year after the person is
32 initially identified by law enforcement as a suspect in the
33 commission of the offense, whichever is later, but in no case later
34 than six years after the commission of the offense.

35 (k) Notwithstanding any other limitation of time described in
36 this chapter, if a person flees the scene of an accident, a criminal
37 complaint brought pursuant to paragraph (1) or (2) of subdivision
38 (c) of Section 192 may be filed within the applicable time period
39 described in Section 801 or 802, or one year after the person is
40 initially identified by law enforcement as a suspect in the

1 commission of that offense, whichever is later, but in no case later
2 than six years after the commission of the offense.

3 (l) A limitation of time prescribed in this chapter does not
4 commence to run until the discovery of an offense involving the
5 offering or giving of a bribe to a public official or public employee,
6 including, but not limited to, a violation of Section 67, 67.5, 85,
7 92, or 165, or Section 35230 or 72530 of the Education Code.

8 (m) *Notwithstanding any other limitation of time prescribed in*
9 *this chapter, if a person actively conceals or attempts to conceal*
10 *an accidental death in violation of Section 152, a criminal*
11 *complaint may be filed within one year after the person is initially*
12 *identified by law enforcement as a suspect in the commission of*
13 *that offense.*

14 ~~SECTION 1. Section 152 of the Penal Code is amended to~~
15 ~~read:~~

16 ~~152. (a) (1) A person who, having knowledge of an accidental~~
17 ~~death, actively conceals or attempts to conceal that death, is guilty~~
18 ~~of a misdemeanor or a felony punishable as follows:~~

19 ~~(2) If a misdemeanor, by imprisonment in a county jail for not~~
20 ~~more than one year, or by a fine of not less than one thousand~~
21 ~~dollars (\$1,000) nor more than ten thousand dollars (\$10,000), or~~
22 ~~by both that fine and imprisonment.~~

23 ~~(3) If a felony, by imprisonment pursuant to subdivision (h) of~~
24 ~~Section 1170, or by a fine of not less than one thousand dollars~~
25 ~~(\$1,000) nor more than ten thousand dollars (\$10,000), or by both~~
26 ~~that fine and imprisonment.~~

27 ~~(b) For purposes of this section, a person who “actively~~
28 ~~conceals” an accidental death means a person who does any of the~~
29 ~~following:~~

30 ~~(1) Performs an overt act that conceals the body or directly~~
31 ~~impedes the ability of authorities or family members to discover~~
32 ~~the body.~~

33 ~~(2) Directly destroys or suppresses evidence of the actual~~
34 ~~physical body of the deceased, including, but not limited to, bodily~~
35 ~~fluids or tissues.~~

36 ~~(3) Destroys or suppresses the actual physical instrumentality~~
37 ~~of death.~~

38 ~~SEC. 2. No reimbursement is required by this act pursuant to~~
39 ~~Section 6 of Article XIII B of the California Constitution because~~
40 ~~the only costs that may be incurred by a local agency or school~~

1 ~~district will be incurred because this act creates a new crime or~~
2 ~~infraction, eliminates a crime or infraction, or changes the penalty~~
3 ~~for a crime or infraction, within the meaning of Section 17556 of~~
4 ~~the Government Code, or changes the definition of a crime within~~
5 ~~the meaning of Section 6 of Article XIII B of the California~~
6 ~~Constitution.~~

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